

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAJOR L. RUSSELL,

Plaintiff,

Case No. 16-cv-11857
Hon. Matthew F. Leitman

v.

CITY OF DETROIT, *et al.*,

Defendant(s).

**ORDER DISMISSING COMPLAINT AGAINST DEFENDANTS KING,
FLANAGAN, AND BUCHANAN FOR FAILURE TO PROSECUTE**

On May 24, 2016, Plaintiff Major L. Russell (“Russell”) filed a complaint against the City of Detroit (the “City”) and eight individual defendants¹ (the “Complaint”). (*See* ECF #1.) Russell claims that the Defendants discriminated against him in violation of 42 U.S.C. § 1981 and retaliated against him in violation of the First Amendment. (*See id.* at 8-9, Pg. ID 8-9.)

Russell successfully served the City of Detroit with the Summons and the Complaint, but he was not able to serve the eight individual defendants within the 90-day period set forth in Rule 4(m) of the Federal Rules of Civil Procedure. (*See* ECF #7 at 2, Pg. ID 50.) On September 1, 2016, he filed a motion seeking a 45-day

¹ The individual defendants are John King, Sean Flanagan, James Houseworth, Joseph English, Joseph Rinehart, Eugene Biondo, Cecilia Buchanan, and Craig Dougherty.

extension in which to serve the individual defendants (the “First Motion to Extend”). (See ECF #7.) In the First Motion to Extend, Russell’s counsel explained that he has an ongoing and serious illness that has prevented him from timely completing service. (See *id.* at 2-3, Pg. ID 51.) The Court granted the First Motion to Extend, allowing Russell until October 24, 2016 to serve the individual defendants. (See ECF #10 at 3-4, Pg. ID 89-90.) Following the First Motion to Extend, Russell was still unable to serve individual defendants Buchanan, Dougherty, English, Flanagan, and King by the October 24, 2016 deadline.

On October 24, 2016, Russell filed a second motion seeking an additional 21-day extension to complete service of the remaining defendants (the “Second Motion to Extend”). (See ECF #11.) On November 2, 2016, the Court provided “one final short extension of time” to serve the remaining defendants. (ECF #14 (emphasis original).) The Court ordered the City to provide Russell with the current or last known addresses of the defendants that had not been served by November 9, 2016 and then file a certificate of service. (*Id.*) Russell was required to serve those defendants within ten days of the filing of the certificate of service. (*Id.*) The City filed a certificate of service on November 2, 2016. (See ECF #15.)

Following that deadline, Russell had still not served three defendants: King, Flanagan, and Buchanan. Accordingly, on July 26, 2017, this Court entered an order for Russell to show cause why the case should not be dismissed for failure to

prosecute as to Defendants King, Flanagan, and Buchanan. (ECF #25.) The order required Russell to file a show cause response by August 9, 2017. (*Id.*)

Russell did not file a response, and there is no indication in the record that Defendants King, Flanagan, and Buchanan have been served. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the Complaint against Defendants King, Flanagan, and Buchanan for failure to prosecute.

IT IS SO ORDERED.

Dated: September 11, 2017

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 11, 2017, by electronic means and/or ordinary mail.

s/ Holly A. Monda
Case Manager
(810) 341-9764